

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE MEDICAL PROTECTIVE COMPANY,)
)
Plaintiff(s),)
)
vs.) Case No. 4:06CV01639 ERW
)
JAMES E. BUBENIK, D.M.D., et al.,)
)
Defendant(s).)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendants and Defendants/Counterclaim Plaintiffs' Joint Motion to Modify the Case Management Order [doc. #62].

I. BACKGROUND

In the course of discovery in this case, all Defendants, the Bubenik Defendants and the Johnston Defendants, sought to depose William Louthan, an employee of Plaintiff. The Parties agreed upon a date to complete the deposition, however, two days prior to the scheduled date, the Plaintiff produced additional documents, as well as a privilege log, which contained information authored by Mr. Louthan. Defendants subsequently canceled the scheduled deposition. On August 10, 2007, Defendants filed a motion to compel the production of documents. Following a hearing held on September 10, 2007, this Court ordered that the documents be presented *in camera* for review. On October 15, 2007, this Court granted in part and denied in part Defendants' Motion to Compel, and ordered that some of the documents must be produced no later than October 25, 2007. Plaintiff fully complied with this order, and produced the documents on October 19, 2007. On October 25, 2007, counsel for the Johnston

Defendants e-mailed counsel for Plaintiff, requesting dates to depose Mr. Louthan, and suggesting three dates when Defendants' counsel would be available. The Johnston Defendants' counsel again e-mailed Plaintiff's counsel on November 1, 2007, and received a response that Plaintiff's counsel would discuss it with the client and then respond. On November 20, 2007, Plaintiff's counsel e-mailed the Johnston Defendants' counsel and advised him that Mr. Louthan would not be produced for a deposition. Plaintiff also faxed a response on November 12, 2007. The discovery deadline was originally October 31, 2007. Defendants' now seek to extend that deadline. The dispositive motion deadline was November 30, 2007, and the case is set for a non-jury trial on March 3, 2008. The Court held a hearing on the matter on December 17, 2007.

II. DISCUSSION

Defendants seek to extend the time allowed for discovery, in order to accommodate the deposition of Mr. Louthan. Plaintiff opposes such an extension, as they argue they will be prejudiced due to the delay. Specifically, Plaintiff asserts that the dispositive motion deadline has already passed, and that trial is scheduled in this matter for March 3, 2008.

While the Court recognizes Plaintiff's concerns, the Court also recognizes that Defendants did not act in bad faith in delaying the deposition of Mr. Louthan. Furthermore, Mr. Louthan's testimony may be helpful to Defendants, and therefore his deposition should be permitted. Both Parties have filed Motions for Summary Judgment in accordance with the case management order. The Court will allow Defendants until January 11, 2008, to depose Mr. Louthan. The Court fully expects the Parties to work together to arrange a mutually acceptable date for Mr. Louthan's deposition, prior to the proscribed deadline. Following the completion of Mr. Louthan's deposition, the Parties shall have until January 18, 2008 to file their responses to the currently pending motions for summary judgment. The Court will allow the Parties to include any new

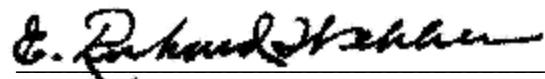
information that is acquired from Mr. Louthan's deposition in their respective responses. The Parties' reply memorandum will be due five days thereafter. The March 3, 2008 trial date remains unchanged.

Accordingly,

IT IS HEREBY ORDERED that Defendants and Defendants/Counterclaim Plaintiffs Joint Motion to Modify Case Management Order [doc. #62] is **GRANTED**. Defendants have until January 11, 2008, to take the deposition of William Louthan.

IT IS FURTHER ORDERED that the parties responses to the currently pending Motions for Summary Judgment, are due no later than January 18, 2008. The Parties' replies are due five (5) days thereafter.

Dated this 18th Day of December, 2007.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE